INVESTIGATIONS

1stLt Gruver
Civil Law Attorney
269-2891

MISSION STATEMENT

- To assist the investigating and legal officers and to ensure the legal sufficiency of an investigation.

LEARNING POINTS

- Types of investigations
- When to use each type of investigation
- How to use each type of investigation

REFERENCES

- JAGMAN – JAGINST 5800.7C W/CH-3
- Supply Manual – MCO P4400.150E w/CH-1
- MARADMIN – 0294/02

TYPES OF INVESTIGATIONS

- Preliminary Inquiries
- Command Investigations
- Litigation Reports

PRELIMINARY INQUIRY

- Serves as an analytical tool to determine whether a JAG investigation or criminal prosecution is warranted
- Required for all incidents of violations of the Uniformed Code of Military Justice (UCMJ) (R.C.M. 303)
- Very informal investigation
- Answers the questions
  - Who? What? Where? When? How?
- It is convened by the officer in command

JAGMAN § 0205a

PRELIMINARY INQUIRY

- Time Limitations:
  - Should be completed within three working days unless an extension is approved JAGMAN § 0204

PRELIMINARY INQUIRY CONT.

- Determinations
  - No further action required
  - Convene a command investigation
  - Convene a litigation report investigation.
  - If authorized to do so convene a Board Of Inquiry. (CG only) JAGMAN § 0205
- Special Considerations
  - In death cases of a military member and if no nexus to military service exists, conduct a limited investigation. (see JAGMAN § 0235)

COMMAND INVESTIGATION

- Purpose
  - To gather, analyze, and record relevant information about an incident or event of primary interest to command authorities. JAGMAN § 0205
- Uses
  - Will be used on significant property loss of $750.00 or More
  - Property damage between $5,000 to $50,000
  - Motor Vehicle Accidents when over $5,000
    - If under then do SF-91 claims form

COMMAND IVESTIGATION CONT.

- Uses continued
  - A disease or injury that may result in a permanent disability or physical inability to perform duty for a period exceeding 24 hours (distinguished from a period of hospitalization for evaluation or observation)
  - Deaths of military personnel or of civilian personnel occurring aboard an activity under military control
  - Aircraft incidents, groundings, flooding, fires, and collisions not determined to be major incidents

MOST COMMON COMMAND INVESTIGATIONS

- Line of Duty (LOD)/Misconduct
- Motor Vehicle Accident
- Missing, Lost, or stolen Government property
- R.C.M 303 Investigations

COMMAND INVESTIGATION CONT.

- Method
  - Is convened in writing;
  - Is conducted by one or more persons;
  - Collects evidence by personal interviews, telephone inquiries, or written correspondence;
  - Is documented in writing in the manner prescribed in the convening order (See JAGMAN Appendix A-2-C);
  - Does not involve hearings; and
  - May contain sworn statements signed by witnesses
  - JAGMAN § 0209

COMMAND INVESTIGATION CONT.

- Time limitations
  - 30 days from the date of the convening order
  - 20 days for death investigation
  - Extensions may be granted JAGMAN § 0209f
- Actions
  - CA will review or cause the investigation report to be reviewed.
  - CA will decide if investigation should be forwarded to higher authority
    - If no, the investigation is treated as an internal report
    - If yes, the report is forwarded up the Chain of Command to the GCMCA for review. JAGMAN § 0209g

COMMAND INVESTIGATION CONT.

- CA may approve, disapprove, modify, add, or delete findings of fact, opinions, and recommendations

- Review
  - A GCMCA superior to the CA must review any Command Investigation forwarded JAGMAN § 0209h
  - In cases involving injuries and deaths of service members or damage to Government property, the CA must route and advance copy to Commander, Naval Safety Center JAGMAN § 0219b
  - In cases questioning adequacy of medical care route an advanced copy to Chief, Bureau of Medicine and Surgery JAGMAN § 0219c

LITIGATION REPORT

- Purpose
  - To investigate an event or incident, which is likely to result in claims or civil litigation against or for DON or the United States
  - Primary purpose is to defend the legal interest of the DON and the United States
  - JAGMAN § 0210
- When to conduct
  - The incident exceeds $50,000 dollars in property damage for or against the government
  - An incident involving death or personal injury of civilians

LITIGATION REPORT CONT.

- Prior to commencing a Litigation Report, contact Cognizant Judge Advocate (CJA), to verify if a Litigation Report is necessary; JAGMAN § 0210b(1)(a)
- Conducted under the direction and supervision of CJA; JAGMAN § 0210b(1)(b)
- Conducted primarily in anticipation of claims or litigation; and JAGMAN § 0210b(1)(C)
- Forwarded to the Judge Advocate General JAGMAN § 0210b(1)(d)
- When report is compiled, it shall be marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" JAGMAN § 0210e(3)

LITIGATION REPORT CONT.

- Time Limitation
  - Normally 30 days from the date of the Convening Order JAGMAN § 0210f
- Action
  - Upon receipt of the report the CA shall review and endorse the investigation JAGMAN § 0210g
  - CA's should not approve or disapprove Findings of Fact (JAGMAN § 0210g)

LITIGATION REPORT, CONT.

- Review
  - Superiors in the Chain of Command not required to comment on the report, but should take warranted action JAGMAN § 0210h(1)
  - Staff Judge Advocate will review report for accuracy and thoroughness and forward report to JAG JAGMAN § 0210g

LINE OF DUTY/MISCONDUCT INVESTIGATION

- When a LOD is required
  - A disease or injury is incurred:
    - That may result in permanent disability, or
    - That incapacitates member from physically performing their duties for a period exceeding 24 hours; or
    - Death (new requirements in death cases)

  JAGMAN § 0221

LINE OF DUTY

- What constitutes “in the Line of Duty”?
  - When an injury or disease incurred by naval personnel while in active service, it is presumed to have been incurred “in the line of duty.” JAGMAN § 0223
  - UNLESS the incident occurred:
    - As a result of the member’s own misconduct
    - While avoiding duty by deserting the service
    - While absent without leave

MISCONDUCT

- **What constitutes “Misconduct”?**

  An injury or disease is the result of a member’s misconduct if it is either intentionally incurred or is the result of willful negligence. JAGMAN § 0224

LINE OF DUTY/MISCONDUCT INVESTIGATION

- Three possible findings
  - A) “in the Line of Duty” and “not due to the member’s own misconduct”
  - B) “not in the Line of Duty” and “not due to the member’s own misconduct”
  - C) “not in the Line of Duty” and “due to the member’s own misconduct”

  JAGMAN § 0225

LINE OF DUTY/MISCONDUCT INVESTIGATION CONT.

- Why LOD/Misconduct determinations are required:
  - Pay (disability retirement, severance and forfeitures)
  - Extensions
  - Re-enlistment
  - Medical care entitlement
  - VA benefits

LINE OF DUTY/MISCONDUCT INVESTIGATION CONT.

- Death
  - Reference: MARADMIN 0294/02
  - The Investigating Officer (IO) will conduct an investigation with the assistance of a Judge Advocate to determine if the death was in the Line of Duty and if the Marine had eligible survivors

LINE OF DUTY/MISCONDUCT INVESTIGATION CONT.

- Death Continued
  - The written findings must identify:
    - Method of review
    - Circumstances under which the member died
    - Whether the death was caused by the member's own intentional misconduct or willful negligence
    - Whether the death occurred during a period of unauthorized absence
    - Whether death incurred in the LOD
    - Provide any available contact information if a former spouse exists

MENTAL RESPONSIBILTY IN LOD

- General Rule
  - Member must be able to comprehend and control their acts
- Presumption
  - Members are presumed to be mentally responsible unless contradictory evidence is present
  - Member must have clear and convincing mental responsibility
  - Only raise mental responsibility if a question is raised by facts of investigation or nature of incident itself
  - JAGMAN § 0226

MENTAL RESPONSIBILITY IN LOD

- Suicide attempts
  - If a bona fide suicide attempt then it can be inferred that the member lacked mental responsibility.
  - Suicidal gestures, (i.e. self inflicted injury) (unless lack of mental responsibility is shown) are deemed to be incurred as the result of member's own misconduct.

  JAGMAN § 0226

INTOXICATION AND DRUG ABUSE IN LOD

- For intoxication alone to be the basis for a misconduct determination
  - There must be clear and convincing evidence to show that the member was intoxicated sufficiently to impair the rational and full exercise of his or her mental or physical faculties at the time of injury (BAC% .10)
  - The impairment was the proximate cause of the injury

JAGMAN § 0227

HELPFUL TIP

- When questioning an injured service member
  - NEVER ask a service member any questions concerning their injury/disease without first providing the proper warning pursuant to JAGMAN § 0221
  - "…prior to being asked to sign any statement relating to the origin, incidence, or aggravation of any disease or injury that he or she has suffered, shall be advised of the right not to sign such a statement."

INVESTIGATIONS

- Our Office will:
  - Advise Commands of requirement to conduct investigations
  - Before starting an investigation, counsel Investigating Officers on duties and responsibilities in conducting investigations
  - Conduct courtesy review of completed investigations
  - Prepare CG endorsements on completed investigations that are forwarded to the CG

LEGAL OFFICER RESPONSIBILITIES

- Know the basics of JAG Investigations (JAGMAN Chap. 2)
- Know references for investigations (we will provide)
- Know what type of investigation to conduct
- Utilize the proper checklist to review investigations
- Refer investigating officers to the Law Center for investigations brief and assistance
- Expeditiously process
- Prepare appointing order
- Preserve evidence
- Prepare command endorsement

KEY CONCEPTS

- Get checklists
- Have the IO consult with a Judge Advocate (JA)
- Before endorsement, let a JA look at it
- Stay on top of the investigation and keep it within its prescribed time limit
- Make sure appointing order gives dues dates
- This is the IO’s primary duty

QUESTIONS